

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
To: The Commission		

COMMENTS OF NEXTEL COMMUNICATIONS ON  
PETITION FOR DECLARATORY RULING OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

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## SUMMARY

Nextel Communications, Inc. (“Nextel”) respectfully submits these Comments on the Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association (“CTIA Petition”) regarding deployment of wireless local number portability (“LNP”). CTIA’s Petition highlights that, although the Commission has mandated that wireless carriers deploy LNP by November 24, 2003, there are a number of implementation issues that must be clarified for consumers to experience the wireless LNP benefits envisioned by the Commission.

The primary reason for these implementation issues is the fact that the Commission, after concluding that LNP should apply to wireless, failed to adopt wireless-specific implementation rules that account for the existing competitiveness of the wireless industry. By apparently assuming that its landline-centric LNP rules made sense in the wireless industry – despite the significant differences in the monopoly-based landline industry and the competitive wireless industry -- the Commission has generated significant uncertainty about the ground rules governing wireless LNP deployment.

First, to ensure that intermodal porting – a centerpiece of the Commission’s LNP decision – is available to all consumers, the Commission must clarify that wireline-to-wireless porting is not restricted to those areas where the wireless carrier happens to have a Point of Interconnection in the wireline rate center. To place such restrictions on intermodal porting would deprive millions of landline consumers of the opportunity to port their landline number to a wireless carrier. With regard to wireline-to-wireless porting, the Commission also should clarify that wireline carriers cannot rely on a four-day window for completing a port to a wireless carrier. This four-day time frame will not

be tolerated by wireless consumers who are not accustomed to such delays in service initiation. Additionally, the delay puts wireless users at risk during the four-day porting window as their 911 calls would be transmitted to Public Safety Answering Points (“PSAPs”) without the proper call-back information.

Second, the Commission must clarify that wireless carriers can require customers to pay in full (including payment of any applicable early termination fees and other charges) prior to completing a port-out request. Given the incentive LNP creates for customers to move from carrier-to-carrier without paying their bills, Nextel intends to protect itself against a spike in bad debt expense by requiring full payment prior to completing a customer’s port-out request.

Third, the Commission must clarify that carriers are required to process port requests as soon as they receive them, subject only to (a) verification that the party requesting the port is authorized to do so; and (b) payment in full by that party. Any other restriction, such as limiting the processing of ports to certain hours of the day (i.e., between 1:00 AM and 5:00 AM) is not necessary and would unreasonably restrict consumers’ ability to port.

Fourth, the Commission must clarify which Metropolitan Statistical Areas (“MSAs”) are in the top 100 MSAs subject to the November 24 deadline. Without such clarification, wireless carriers do not know which MSAs must be LNP-ready by the November deadline. Finally, the Commission must clarify that carriers may disclose customer proprietary network information (“CPNI”) to other carriers to facilitate the porting process, without entering into confidentiality agreements to protect the CPNI in question. Without such clarification by the Commission, carriers may feel compelled to

negotiate CPNI confidentiality agreements, thus needlessly complicating and delaying number portability.

Without guidance from the Commission on these issues, there will be too many unanswered questions that carriers must decide for themselves, leaving open the possibility that carriers will implement LNP in a number of different ways. Differing processes and assumptions will result in a wireless LNP process that, too often, does not work. As a result, consumers will be frustrated, confused and ultimately will not benefit from wireless LNP.

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Pursuant to the May 22, 2003 Public Notice of the Federal Communications Commission (“Commission”),<sup>1</sup> Nextel Communications, Inc. (“Nextel”) respectfully submits these Comments on the Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association (“CTIA Petition”). Raising a number of Local Number Portability (“LNP”) implementation issues, the CTIA Petition highlights that there are a number of matters that must be resolved by the Commission before wireless carriers can successfully deploy LNP by November 24, 2003. By imposing the LNP obligation on wireless carriers without also considering and applying wireless-specific implementation rules, the Commission has established a wireless LNP program that will not benefit consumers. On the contrary, the Commission’s apparent reliance on its wireline-centric LNP rules for implementation of wireless porting – whether wireless-to-wireless porting or wireline-to-wireless porting – will frustrate and confuse consumers rather than bringing them the pro-competitive benefits envisioned by the Commission.

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<sup>1</sup> Public Notice, “Comment Sought on CTIA Petition For Declaratory Ruling on Local Number Portability Implementation Issues,” DA 03-1755, rel. May 22, 2003.

While some may assert that the wireless industry is merely throwing up roadblocks to LNP deployment,<sup>2</sup> the reality is there is significant uncertainty about the ground rules governing wireless LNP deployment. As Nextel continues to implement the systems, operations and business policy changes necessary to effectuate LNP on November 24, a number of implementation questions are being raised that can only be addressed by the Commission to ensure fair, pro-competitive and pro-consumer deployment of LNP. For example, the wireline industry's claims that wireline numbers are portable to wireless carriers in only very limited circumstances so undercuts the Commission's LNP goals that it must be immediately resolved by the Commission. Similarly, there are no clear guidelines governing the wireless porting process, *e.g.*, what reasonable business practices can carriers adopt as part of their porting process. Finally, the continued uncertainty about how many and which Metropolitan Statistical Areas ("MSAs") are subject to the November 24 deadline make it impossible to know which MSAs should be LNP-ready.

Without guidance from the Commission on these and the other implementation issues addressed herein, there will be too many unanswered questions that carriers must decide for themselves, leaving open the possibility that carriers will implement LNP in a number of different ways. Differing processes and assumptions will result in a wireless LNP process that, too often, does not work. As a result, consumers will be frustrated, confused and ultimately will not benefit from wireless LNP.

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<sup>2</sup> See "CTIA Takes LNP to the Hill," RCR Wireless News, May 19, 2003, at p. 1.

I. THE COMMISSION MUST CLARIFY THE BUSINESS RULES APPLICABLE TO WIRELINE-WIRELESS PORTING TO ENSURE CARRIERS CANNOT CREATE UNREASONABLE BARRIERS TO THE PORTING PROCESS.

The CTIA Petition raises the continuing disparities in wireline porting processes and wireless porting processes, and the inapplicability of wireline rules to the wireless industry. These disparities, coupled with the fact that many of the wireline rules simply make no sense when applied to the wireless industry, restrict wireless carriers' ability to compete on a level playing field with wireline carriers, cause unnecessary customer confusion and dissatisfaction, and create unnecessary public safety concerns for wireless users. Thus, the Commission must clarify the issues discussed below to ensure an efficient and effective porting process for all consumers, both wireless and wireline. Such clarification, moreover, should be provided immediately as wireless carriers must have sufficient time to implement their policies and procedures prior to the November 24 deadline.

- a. The Commission cannot permit wireline carriers to frustrate the essential goal of WNP by limiting their porting obligation only to those wireless carriers with a Point of Interconnection in the LEC rate center associated with the ported number.

Wireline carriers' attempts to restrict their porting obligation to those wireless carriers with a switch (or "Point of Interconnection" ("POI")) in the LEC's rate center highlights two significant issues that must be addressed by the Commission: (1) Local Exchange Carriers' ("LECs") incentive to limit intermodal competition by restricting their obligation to port to wireless carriers; and (2) the need for porting rules that make sense in the wireless industry (*i.e.*, rate-center-centric porting rules are not applicable to an industry that operates without regard to wireline rate centers). The Commission's apparent attempt to fit the competitive wireless industry into the mold of its monopoly-



based LEC porting rules has generated uncertainty about the implementation of wireless number portability and provided wireline carriers an opportunity to restrict the intermodal competition sought by the Commission in mandating wireless LNP.

As Nextel has previously stated in this proceeding,<sup>3</sup> the wireline position that LNP is only required between carriers with a physical presence in the same rate center negates the right of literally millions of wireline consumers to port their numbers to wireless carriers. For example, if a Verizon landline customer in Leesburg, Virginia wanted to port out his number to Nextel, Verizon would refuse the port out request because Nextel has no POI with Verizon in its Leesburg, Virginia rate center.<sup>4</sup> This is the result, under the wireline carriers' LNP implementation guidelines, despite the fact that Nextel is interconnected to the Verizon network in Northern Virginia and has wireless coverage throughout Leesburg and the surrounding areas. The Commission cannot permit its rules to be applied in a manner that dictates such an absurd result.<sup>5</sup>

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<sup>3</sup> Comments of Nextel Communications, Inc., filed February 26, 2003, in CC Docket No. 95-116.

<sup>4</sup> Any suggestion by the wireline industry (or the Commission) that wireless carriers should have to add POIs in every landline rate center to ensure that all consumers can take advantage of intermodal porting would violate Section 1 of the Communications Act, 47 USC Section 151, by forcing wireless carriers to make unnecessary and unreasonable investments to build out their networks in an inefficient manner just to take advantage of this "pro-competitive" Commission policy. This is no different, in fact, than the Commission's conclusion that Interexchange Carriers ("IXCs") were not required to establish a POI with landline carriers in every rate center. Such enormous investment by the IXCs would have been unnecessary, inefficient and a waste of carrier resources – just as it would be to place a wireless switch in every LEC rate center.

<sup>5</sup> Moreover, once that "wireline number" is ported to a wireless carrier, it can be subsequently ported to any other wireless carrier in that local area -- whether or not the subsequent wireless provider had a POI in the LEC's rate center. This further demonstrates that the wireline position is nothing more than a loophole in the Commission's current wireline-centric porting rules to impede intermodal competition.

- b. The Commission cannot permit wireline carriers to frustrate intermodal porting by using a minimum four-day porting interval.

Wireless carriers have developed porting processes and procedures that require a port, absent unique complexities or issues, to complete in approximately two to two-and-a-half hours. In stark contrast to this efficient and pro-consumer process, wireline carriers are completing ports in a minimum of four business days. This four-day process cannot be tolerated in the wireless porting arena for two reasons: (1) the delay will frustrate consumers, and (2) the delay will create public safety issues as wireless 911 calls may not be handled properly during the four-day porting interval.

A minimum four-day porting process is unnecessarily long in the highly competitive wireless industry. While wireline customers today, seeking to move from one wireline carrier to another, may have had little issue with the long interval, such delays will not be tolerated in the significantly more competitive wireless industry. Wireless consumers are not accustomed to such delays in service initiation. Thus, again, the Commission must ensure that its rules (and the industry guidelines implementing them) are appropriate for the competitive wireless industry. A consistent porting interval between wireline carriers and wireless carriers, and one that is not unnecessarily long, is critical to enhancing competition, particularly intermodal competition.

In addition to the consumer frustration created by the wireline four-day porting interval, the delays inherent in that process create significant public safety concerns for consumers awaiting completion of their port-out request. Should a consumer port his wireline number to a wireless carrier and in the interim make a 911 call, the Public Safety Answering Point (“PSAP”) will be unable to call back the 911 caller should the call be disconnected. If the wireless phone has been activated with the wireline telephone

number (but the port is not yet complete), the PSAP's call-back may be routed to the landline phone, where the 911 caller may or may not be at the time. Similarly, if the wireless phone has not been activated, the 911 call will have no call-back number associated with it during that four-day period, resulting in no PSAP ability to call back. As a result, the wireline carriers' four-day interval allows significantly more opportunity for the 911 system to fail to work properly. While the wireless porting process raises the same concerns and risks, they are significantly reduced by the much shorter porting interval of two to two-and-a-half hours.

However, these public safety concerns are significant and will be especially problematic early on after November 24 because, during the early period of wireless deployment, it is likely that many (if not most) ports will not complete in the two to two-and-a-half hour minimum time frame. Rather, given the complexities – which will only be exacerbated if the Commission fails to provide the much-needed clarifications requested in the CTIA Petition and herein – carriers will implement processes that do not neatly match up with other carriers' processes, resulting in a number of ports that require additional inquiries and evaluation. The result will be porting intervals much longer than the planned two-hour window. These longer intervals, which in the early stages of wireless porting could be days long, raise the same public safety concerns created by the wireline four-day porting process. Thus, the clarifications requested herein are critical to ensuring that LNP does not, as the National Emergency Number Association (“NENA”) has stated it should not, result in any “loss or diminution of 911 service and access to emergency services/public safety.”<sup>6</sup>

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<sup>6</sup> CTIA Petition at p. 13, citing Letter from James Hobson, Counsel for NENA, to Magalie Salas, Secretary, CC Docket No. 94-102 et al., WT Docket No. 01-184, at 3 (filed Jan. 30, 2002). No matter the porting

## II. THE COMMISSION MUST CLARIFY THE PORTING RULES AS THEY APPLY TO WIRELESS-TO-WIRELESS PORTING.

The Commission's failure to adopt wireless-specific porting rules that appropriately consider the unique competitive aspects of the wireless industry has created a number of uncertainties regarding carriers' flexibility to implement certain porting processes and business policies. As Verizon Wireless stated in its May 20, 2003 *ex parte* filing in this proceeding,<sup>7</sup> the Commission needs to provide additional clarification regarding wireless porting rules to ensure that all carriers are operating on a level playing field. Thus, clarifying both wireline-to-wireless porting rules and wireless-to-wireless porting rules will significantly improve the porting process for consumers and achieve the Commission's LNP goals. Moreover, given the enormous impact these Commission decisions will have on carriers' systems, particularly back-office billing and provisioning systems, such clarification must be provided no later than the first week of September – approximately 90 days before LNP is launched in the wireless industry.

- a. The Commission should clarify that wireless carriers can require customers to pay in full (including applicable fees and penalties) prior to completing the port-out process.

Wireless carriers operate in a highly competitive environment where customers have numerous choices for their wireless service. As a result, the average churn rate for the industry already reaches approximately 30% annually.<sup>8</sup> Many of these customers,

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interval, there will be some period of time during which a wireless 911 caller will be at risk for dropped 911 calls that cannot be called back by the PSAP. This is inherent in the porting process.

<sup>7</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from John T. Scott, III, dated May 20, 2003, in CC Docket No. 95-116.

<sup>8</sup> Morgan Stanley, December 2002. The Commission should recognize that the cost of churn is a cost borne by every wireless customer, as it significantly drives up a carrier's cost of doing business. Any increase in the industry's churn rate is an increased cost that ultimately will be passed on to wireless consumers.

moreover, switch providers today – or simply terminate their service – with past-due balances and/or outstanding debts for early termination fees and other applicable charges. Because consumers already have the ability to change wireless providers, many without paying their bills to the previous provider, the implementation of LNP will provide even greater incentive for consumers to change providers without first fulfilling their financial obligations to their initial carrier. The ability to take their phone number to another carrier, therefore, may facilitate a consumer’s ability to move from provider to provider, but it also enhances the possibility that consumers, falling behind in their financial obligations, will simply move to another carrier rather than pay their bills to the first. In today’s non-LNP environment, customers have less incentive to leave a carrier without first paying their bills, given that they would lose their phone number. As a result, those consumers most attached to their phone numbers have a greater incentive today to pay their bills.

To ensure that it does not experience a spike in bad debt expense as a result of LNP, Nextel plans to require payment in full from any customer seeking to port out his or her number and terminate service.<sup>9</sup> Payment in full includes any applicable early termination fees or penalties from a customer who has terminated his or her agreement prior to the end of the term. Until Nextel has received this full payment, it will not complete a port-out request. On the other hand, if a customer chooses to terminate service and leave Nextel prior to the end of a contract period and/or has not paid his bills, there is little, if anything, Nextel can do to prevent the customer’s actions (other than

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<sup>9</sup> Just as all consumers absorb the costs of churn (and the cost of any potential increases in churn), the cost of increased bad debt expense also would be borne by all customers, including those currently paying their bills in a timely manner. Therefore, to protect against increased costs to all of its customers that would

taking appropriate legal action), but that customer should not expect to take his or her phone number. Nextel believes this approach injects much-needed equity into the porting process, *i.e.*, customers who have fulfilled their financial and contractual obligations to their current carrier are entitled to port their phone number elsewhere, and customers who choose not to fulfill those obligations cannot port their phone number.

- b. The Commission should clarify that unreasonable business restrictions are not appropriate and should not be used to delay, prevent or hinder the porting process.

While protecting against increasing bad debt expense is a rational and reasonable condition to a customer's right to port a telephone number, some carriers may attempt to impose restrictions on the porting process that will hinder, if not prevent, a customer's port-out request. For example, Nextel has learned that some wireless carriers plan to implement "porting windows" during which ports will be processed, *i.e.*, only between 1:00 am and 5:00 am will port requests be processed. Such a restriction on porting is unnecessary and unreasonable, given the advanced systems and infrastructure soon to be in place to facilitate porting. To ensure that such policies and procedures are not used to hinder the porting process, the Commission should clarify that there are no exceptions to processing port requests – as soon as they are received – other than (a) ensuring that the customer has fulfilled his/her financial and contractual obligations to the current provider; and (b) verifying that the individual requesting the port is authorized to make the port-out decision. Permitting these two reasonable business restrictions will protect both carriers and consumers from the unintended consequences of a porting regime that could be manipulated to harm them.

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result from increased bad debt expense, Nextel will implement procedures to require customers to pay in full prior to porting.

Such misuse or abuse of the porting process must be closely monitored and swiftly addressed by the Commission. Any lag in the Commission's response to complaints of carrier misconduct will greatly benefit the party intent on misusing the process because, while the Commission may ultimately impose fines and penalties on that party, the carrier will have nonetheless unfairly ported in customers from other carriers and/or precluded porting out of its own customers. Once a carrier's customer has ported to another carrier – whether pursuant to fair or unfair processes – that customer is gone and, short of winning them back to the initial carrier's service, there is little that can be done to make whole the injured carrier(s). In an industry as competitive as the wireless industry, where customers already churn at a rate of approximately 2.5% per month, carriers will look for every opportunity to attract new customers and hold on to their existing customers. Should these incentives result in any misuse of the porting process, the Commission must be prepared to take immediate action to ensure that carriers do not benefit from such misuse and/or abuse of the process.

III. THE COMMISSION MUST CLARIFY WHICH –AND HOW MANY – MSAS ARE IN THE TOP 100 MSAS SUBJECT TO THE NOVEMBER 24, 2003 IMPLEMENTATION DEADLINE.

Pursuant to the Commission's wireless portability rules, wireless carriers are required to implement number porting capabilities in the top 100 MSAs on November 24, 2003. Since the Commission crafted that rule, there has been substantial confusion as to which "list" governs the top 100 MSAs for purposes of wireless LNP deployment. At one time, the Commission recognized there was confusion and sought public comment on which MSAs should be included in the top 100 MSAs. However, it has never acted on those comments to clarify whether some additional twenty markets – markets in addition to the top 100 MSAs originally outlined in the Commission's First Report and Order in this

proceeding – are subject to the November deadline. As a result, carriers are uncertain of their LNP obligation as of November 24. If Nextel must deploy LNP in the twenty markets not originally included in the list of top 100 MSAs, the Commission must clarify this obligation by the first of September so Nextel can make the necessary systems and operational upgrades to support wireless LNP in those additional areas. Otherwise, Nextel’s LNP capabilities will only be available in the 100 MSAs originally covered by the Commission’s First Report and Order.

**IV. THE COMMISSION SHOULD CLARIFY THAT CARRIERS ARE NOT REQUIRED TO NEGOTIATE CONFIDENTIALITY AGREEMENTS TO PROTECT ANY CPNI DISCLOSED DURING THE PORTING PROCESS.**

To facilitate the number portability process, the Commission should clarify that carriers may disclose customer proprietary network information (“CPNI”) to other carriers to facilitate the porting process, without entering into confidentiality agreements to protect the CPNI in question. Any CPNI that a carrier discloses during the porting process would be adequately protected since all carriers are already bound by the CPNI rules. Without such clarification by the Commission, carriers may feel compelled to negotiate CPNI confidentiality agreements, thus needlessly complicating and delaying number portability.

The CPNI rules bind every “telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service.”<sup>10</sup> When a carrier discloses CPNI to a third party, the rules require it to ensure that safeguards are in place to protect such CPNI from further

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<sup>10</sup> 47 U.S.C. § 222.



dissemination or uses beyond those to which the consumer consents.<sup>11</sup> On the one hand, this requirement raises the question of whether a carrier must enter into CPNI confidentiality agreements with each carrier to or from which it is porting. On the other hand, such a requirement appears superfluous, because the other carrier is bound by the CPNI rules. “Port-by-port” negotiations over CPNI confidentiality terms would frustrate the seamless process that the LNP regime envisions, given the numerous time-consuming issues that arise in such negotiations (e.g., indemnification and limits on liability) and the hundreds of carriers with which a nationwide provider may have to interact. The Commission can avoid such frustration and delay by clarifying that the CPNI rules protect any CPNI that carriers disclose to each other (and their contractors and agents) during the porting process, and that carriers need not enter into confidentiality agreements to safeguard such CPNI.

## V. CONCLUSION

Although the Commission has concluded that the LNP mandate is equally applicable to wireline and wireless carriers, it has failed to address a number of wireless-specific implementation issues – some of which have been pending at the Commission for years. With the wireless LNP deadline established for November 24 of this year, just over five

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<sup>11</sup> See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended; 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, *Third Report and Order and Further Notice of Proposed Rulemaking*, 17 COMMISSION Rcd. 14860, at ¶ 47 (2002) (“We require that carriers that allow access to or disclose CPNI to independent contractors or joint venture partners . . . assure that certain safeguards are in place to protect consumers’ CPNI from further dissemination or uses beyond those consented to by the consumer.”).

months from now, wireless carriers need answers to these questions before they can successfully deploy service to the public. Therefore, Nextel respectfully requests that the Commission act no later than the first of September to provide clarification on the issues addressed herein. Without such clarification at least 90 days before the deadline, carriers cannot successfully deploy wireless LNP.

Respectfully submitted,

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